SUPREME COURT, U.S.
Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1975

CASE NO. 75-555

COURT REPORTERS OF DADE COUNTY,
Petitioner,

vs.

HONORABLE CIRCUIT JUDGES FOR THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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MIAMI REVIEW — 371-4853 — 377-3721

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A.

OPINIONS BELOW

The petitioner, Court Reporters of Dade County, seeks a writ of certiorari to review the judgments and decisions of the Supreme Court of Florida in the case of Court Reporters of Dade County, Appellant, v. Honorable Circuit Court Judges for the Eleventh Judicial Circuit in and for Dade County, Florida, Appellees, Fla. 1975, 314 So.2d 782 [Florida Supreme Court Case 46,762; App. E]; and Court Reporters of Dade County, Petitioner, v. Honorable Circuit Judges for the Eleventh Judicial Circuit in and for Dade, County, Florida, Respondents, Fla. 1975, 314 So.2d 782 [Fla. Supreme Court Case No. 46,740; App. F]. In the first mentioned decision, the Florida Supreme Court dismissed the appeal of the Court Reporters of Dade County who were seeking a review of a decision of the Third District Court of Appeal (Fla.App. 304 So.2d 549; App. L) and in the second decision, the Supreme Court denied a petition for a writ of certiorari, pursuant to which the Court Reporters also sought review of the same decision of the Third District Court of Appeal.

The Court Reporters of Dade County, the Petitioner here, seek review and reversal of the decisions of the Supreme Court of Florida. The decisions effectively have denied review of the order of the Third District Court of Appeal. The Supreme Court dismissed the appeal [for apparent absence of a constitutional question]; and denied petitioner review through certiorari under state practice. The petitioner here seeks reversal and quashal of the Supreme Court denials of review, and ultimately reversal of the decision of the Third District Court of Appeal,

State of Florida, which had denied a petition for certiorari to review General Order No. 5 of the Circuit Court Judges of the Eleventh Judicial Circuit in and for Dade County, Florida. That order regulates payment and fees for Court Reporters services performed in all civil and criminal cases, "including depositions," in the Circuit Court of the Eleventh Judicial Circuit in the County of Dade (App. Q.).

Copies of the following decisions, opinions and proceedings are appended hereto:

Appendix A—Order of the Supreme Court of Florida dated July 17, 1975, in Case No. 46,762, denying Petition for Rehearing of Court Reporters, addressed to dismissal of appeal for lack of jurisdiction.

Appendix B—Order of Supreme Court of Florida, dated July 17, 1975, in Case No. 46,740, denying Petition of Court Reporters for rehearing addressed to Order of Supreme Court denying Petiiton for a Writ of Certiorari.

Appendix C—Petition for a Rehearing of Court Reporters of Dade County addressed to order dismissing the appeal, in Case No. 46,762.

Appendix D—Petition for Rehearing of Court Reporters, in Case No. 46,740, addressed to Order of Supreme Court of Florida denying Petition for Writ of Certiorari.

Appendix E—Order of Supreme Court of Florida, dated May 29, 1975, in Case No. 46,762, dismiss-

ing appeal of Court Reporters, for lack of jurisdiction. (Reported at 314 So.2d 782.)

Appendix F—Order of Supreme Court of Florida, bearing date May 29, 1975, in Case No. 46,740, denying Petition of Court Reporters of Dade County for a Writ of Certiorari. (Reported at 314 So.2d 782.)

Appendix G—Notice of Appeal of Court Reporters, seeking review in Supreme Court of Florida of Order of Third District Court of Appeal denying Petition for a Writ of Certiorari to Review General Order 5 of Honorable Circuit Judges for Eleventh Judicial Circuit in and for Dade County, Florida.

Appendix H—Assignments of Error on appeal by Court Reporters of Dade County to Supreme Court of Florida, from Order of Third District Court of Appeal denying Petition for Writ of Certiorari to Review General Order No. 5.

Appendix I—Petition for a Writ of Certiorari filed in Supreme Court of Florida, seeking review of the decision of District Court of Appeal of Florida, Third District, denying the Petition for Writ of Certiorari to Review General Order No. 5 of Circuit Judges.

Appendix J—Order of Third District Court of Appeal, denying Petition for Rehearing of its Order denying Petition for Writ of Certiorari to Review General Order No. 5.

Appendix K—Petition of Court Reporters of Dade County, for Rehearing of Decision of Third District Court of Appeal.

Appendix L—Order of Third District Court of Appeal denying Petition for Writ of Certiorari to review General Order No. 5 of Honorable Circuit Judges of the Eleventh Judicial Circuit in and for Dade County, Florida. (Reported at 304 So. 2d 549.)

Appendix M—Order of Third District Court of Appeal treating Court Reporters suggestion for a Writ of Prohibition and Appeal by Court Reporters as Petition for Certiorari.

Appendix N—Suggestion for Writ of Prohibition filed in District Court of Appeal, Third District, seeking review of General Order No. 5 of Honorable Circuit Court Judges.

Appendix O—Notice of Appeal, seeking review of General Order No. 5 of Circuit Court of the Eleventh Judicial Circuit.

Appendix P—Assignments of Error on Appeal to the Third District Court of Appeal from General Order No. 5.

Appendix Q—General Order No. 5 of Eleventh Judicial Circuit in and for Dade County, Florida [Case No. 74-1].

Appendix R—Report of Commissioner.

Appendix S—General Order 4.

B.

GROUNDS UPON WHICH JURISDICTION OF THIS COURT IS INVOKED

The decisions, opinion and judgment, of the Florida Supreme Court, denying appellate review of the order of the Third District Court of Appeal, were dated May 29, 1975 (Appendix E; F). Petitions for Rehearing (Appendix C; D) were denied by Orders dated July 17, 1975 (Appendix A, B). Jurisdiction is invoked pursuant to 28 U.S.C., §1257(3); and 28 U.S.C. §2101(c); and Supreme Court of the United States, Revised Rules, effective July 1, 1970, Rule 19(1)(a); Rule 21; Rule 22(3).

C.

QUESTION PRESENTED FOR REVIEW ON MERITS

WHETHER SUPREME COURT OF FLORIDA COULD PROMULGATE A RULE AUTHORIZING THE CIRCUIT JUDGES OF THE ELEVENTH JUDICIAL CIRCUIT TO ENTER AND RECORD A GENERAL ORDER REGULATING COURT REPORTERS FEES FOR DEPOSITIONS, AND COPIES THEREOF, AND WHETHER THE CIRCUIT JUDGES CONSTITUTIONALLY COULD PROMULGATE SUCH A GENERAL ORDER; OR WHETHER SUCH RULES AND ORDERS AND REGULATIONS OF COURT REPORTERS FEES, EVEN FOR DEPOSITIONS NOT FILED IN COURT OR USED AT TRIAL,

AND PRIVATELY ORDERED COPIES, VIOLATE THE RIGHTS OF THE COURT REPORTERS TO DUE PROCESS OF LAW UNDER (a) DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION, AMENDMENT 14, and (b) THE EQUAL PROTECTION OF THE LAW CLAUSE OF THE UNITED STATES CONSTITUTION, AMENDMENT 14.

D.

STATUTES AND CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED

Amendment XIV, United States Constitution:

Section 1.... "No State shall make or enforce any law which shall abridge the provileges or immunities of citizens of the United States; not shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Rule 1.035, FLORIDA RULES OF CIVIL PROCEDURE, provides:

"Rule 1.035, Court Reporter

(a) *When Required.* Proceedings shall be reported on the request of any party. He shall be responsible for payment of the reporter. The

court may order the proceedings reported. Otherwise, reporting of any proceeding shall not be required.

(b) *Fees.* The judges of a circuit court by majority vote may set the fees to be charged by court reporters by general order. The order shall be uniform in all courts throughout the territorial jurisdiction of the circuit court and shall be recorded.

(c) *Record.* When proceedings are being reported, no part of the proceedings shall be taken without being reported unless all of the parties agree to do so and the court approves the agreement.

(d) *Transcripts.* The court may specify the form size, spacing and method of typing transcripts of proceedings by general order. The order shall be recorded." [Effective Dec. 13, 1971, as amended, effective Jan. 1, 1973; 265 So.2d 21; 253 So.2d 404].

Rule 3.025, *Florida Rules of Criminal Procedure*, in pertinent part provides:

"(c) *Court Reporters.* The fees to be allowed court reporters shall be in the amounts as provided by Rule 1.035, Florida Rules of Civil Procedure."

E.

STATEMENT OF THE CASE

I. Proceedings before Circuit Judges of the Eleventh Judicial Circuit.[1]

a. On March 19, 1974, by General Order No. 4, the Circuit Judges of Dade County, sought to control the rates and fees of court reporters for depositions, taken out of the courtroom. (App. 5). Unexplainably, General Order No. 4 had lowered all rates for court reporters—for transcripts of court proceedings—as well; and extreme concern and anxiety amongst the court reporters resulted.

b. On March 27, 1974, numerous court reporters, on behalf of other court reporters and themselves, filed a petition to modify General Order No. 4. The Circuit Judges, acting through the chief judge thereupon appointed the Honorable Darrey A. Davis as Commissioner to take testimony and evidence upon proper notice at a public hearing to determine whether General Order No. 4 should be modified. The Commissioner was specifically directed to take testimony concerning court reporters' income, profits, costs, expenses and economic factors. Public hearings thereafter were held on April 26, 1974 and May 3, 1974 before the Commissioner, and he thereupon entered his report upon the testimony taken, making certain recommendations and proposals (App. R).

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[1]T. Reference to Conformed Transcript of Proceedings filed in the Supreme Court of Florida; actual record, including full testimonial transcript, in complete form, remains in Third District Court of Appeal. App. Appendix to this Petition.

Conspicuous by its absence in the proposals was any recommendation whatsoever with regard to depositions nor were there any findings that attendance fees and rates for depositions and indeed copies, as generally charged, were excessive, or that they impaired or adversely affected judicial proceedings.

c. Based thereupon, after the extensive report of the Commissioner, the Circuit Judges for Dade County indeed amended General Order No. 4 and adjusted *upward* the fees in General Order No. 5, but again included the words "including depositions" (App. Q) just as General Order No. 4 had.

d. The hearing record shows that at the hearing before the Commissioner, a differentiation was made between depositions and courtroom hearings; and the face of the Commissioner's report made no recommendations whatsoever for depositions. This was so because of obvious features of depositions. Private agreements between litigants and their counsel and court reporters for fees for typing of depositions and copies are not the subject of court adjustment, and regulations are simply an infringement upon the free enterprise system.[2]

[2]As a matter of fact, court reporters consider reporting and typing of depositions the same as freelance reporting. Their reasonable profits are not bottomed on *court* reporting to any degree but rather on deposition work and freelance reporting. This is reflected in the record by the obvious absence of reference to deposition regulation or deposition copy regulation in the report of the Commissioner, who saw fit to recommend modification of General Order No. 4 upward even insofar as court proceedings and transcripts were concerned. (C.f. T.27; T.29, T.31).

II. Appellate Proceedings; Constitutional Issues Raised At Earliest Stage And At All Times Thereafter

e. In all events, because the court reporters were aggrieved by the order and attempt unconstitutionally to regulate their private enterprise right insofar as out-of-court depositions—which might or might not be filed—were concerned; and because of interference with their constitutional rights, i.e., right of free enterprise, equal protection and due process, insofar as the regulation of fees for attendance and for deposition copies as well as originals were concerned, the court reporters filed an appeal (App. O, P); and a suggestion for a writ of prohibition (App. N), challenging at the earliest opportunity, the constitutionality of General Order 5 deposition regulation. The Third District Court of Appeal treated the suggestion for a writ of prohibition as a petition for a writ of certiorari and consolidated the direct appeal with the certiorari petition. (No. 74-1143). Procedurally, under Florida law, application for such a petition was the only method to secure review of such an order. (App. M). Oral argument was had and the Third District Court of Appeal simply denied per curiam the petition for a writ of certiorari to review General Order No. 5 (App.L).

f. Upon denial of the petition for rehearing in the Third District Court of Appeal of Florida (App. J. K), the court reporters then filed a petition in the Florida Supreme Court for a Writ of Certiorari, seeking review of the decision of the Third District which confirmed General Order No. 5. Under the peculiar aspects of the Florida law, jurisdiction in the Supreme Court could be obtained only by showing a conflict of Florida appellate decisions on the same points of law. We attempted to do this to exhaust our

state remedies and to insure that every avenue of review fully was explored (App. I). Even in that petition, limited to an attempt to show conflict jurisdiction, we raised our claim of breach of the United States Constitution with particularity (App. I). Similarly, we filed a Notice of Appeal to the Florida Supreme Court. Under Florida appellate procedure, a direct appeal to the Supreme Court is allowed automatically, when the decision of the District Court of Appeal initially construes a controlling provision or provisions of the Federal Constitution (App. G, H). We specifically asserted in our appeal and in our assignments of error, our contention that General Order No. 5 violated the United States Constitution, Amendments 5 and 14, and urged that the Third District Court of Appeal, in denying the petition for certiorari, initially construed the due process clauses of the Federal Constitution and the equal protection clause (Amendment 5; Amendment 14). (App. G, H).

g. As indicated, the Florida Supreme Court determined that it had no jurisdiction, under Florida Appellate Procedure, to review the matter by direct appeal; and denied the petition for certiorari (App. E, F). We petitioned for rehearing again advancing our constitutional arguments (App. C, App. D), but the petitions were denied (App. A, App. B). The effect of the decisions of the Supreme Court that there was no jurisdiction for review in that court, and the effect of the denial of the petition for a writ of certiorari by the Third District Court of Appeal, has been to allow promulgation of a rule which we claim violates the United States Constitution, and appellate review has been denied by the Florida Supreme Court. In dismissal of the appeal, the Court of necessity found no constitutional interpretation was made.

F.

REASONS FOR ALLOWING THE WRIT — RULE 19

There is no basis for regulating fees of court reporters for attendance at, and transcriptions of, depositions, including copies thereof. The fees are set pursuant to agreement between private litigants and counsel on the one hand and the court reporters on the other. There is no more basis for this regulation than there is for regulation of any public stenographer for taking down any statement out of court; or for regulating prices of paper to be used in depositions just because they may (or may not be) filed. In ruling as it did, the Florida Supreme Court (and the Third District Court of Appeal) actually entered orders which approved deprivation of rights of the court reporters to equal protection of the laws and due process of law in their right to reward for their industry, under the United States Constitution as interpreted in prior decisions of this court.

There of course was state involvement here through the Circuit Court, which promulgated an order in a matter of private enterprise, obstensibly through the authority of the Florida Rules of Civil Procedure promulgated by the Florida Supreme Court (Florida Rules of Civil Procedure 1.035; Rule 3.025); and through what amounts to Florida Appellate approval of the order. Of course nothing in the Rules (1.035; 3.025) mentions depositions, much less attendance or depositions not filed in court, or copies. In all events, state action here is involved without question, for purposes of equal protection consideration under the 14th Amendment: *Shelley v. Kraemer, Mich. & Mo.*, 334 U.S. 1, 168 S.Ct. 836 (1948); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 92 S.Ct. 1965 (1972).

Here, the classification of court reporters, for regulation, was discriminatory and arbitrary in both a horizontal and vertical sense. Within the class, court reporters who type sworn and unsworn statements and affidavits not embodied in depositions, may still charge what they choose; so may private stenographers. Thus, within the class of "reporters" themselves, there is an invidious and arbitrary discrimination—because only official court reporters taking depositions are regulated in their fees, for attendance and transcription.

Similarly, court reporters have been selected for regulation, as opposed to the people who manufacture the paper for the depositions and a myriad of other persons involved in the process, including for example, typewriter dealers or paper sellers—all who have a hand in the preparation of depositions for filing, or for that matter not for filing, and the copies thereof.

Classification is discriminatory, arbitrary and capricious. Certainly attendance and deposition *copies* ordered by private agreement between counsel or parties, and a court reporter are not a subject for control by the court and a regulation thus singling out and so regulating court reporters is not constitutionally allowable. The same certainly may be said insofar as the order seeks to regulate fees for depositions not to be filed in the court.

Nor is there *any* indication that the legislative classification here is reasonably or rationally related to a legitimate state interest. There was no showing, and could be none, that deposition fees and attendance fees were causing *any* hardship or impairment of judicial proceedings; and certainly, privately ordered copies have no possible

rational connection with any state interest. And since the regulation touches upon a matter of fundamental interest —the right to work in a free enterprise system and to be compensated for that work pursuant to a reasonable private contract (with no demonstrable state interest); the rational relationship standard becomes relatively strict. Indeed, a higher degree of scrutiny is required. Recent decisions of this court teach that in a case like this, the test calls for a serious and genuine judicial inquiry into the correspondence between the classification and the legislative goals, see *Shapiro v. Thompson*, 394 U.S. 618, 655, 89 S.Ct. 1322; *U.S. Department of Agriculture v. Moreno*, 413 U.S. 528, 93 S.Ct. 2821 (1973); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 92 S.Ct. 1400 (1972); *Eisenstadt v. Baird*, 405 U.S. 438, 92 S.Ct. 1029 (1972); *Mayer v. Chicago*, 404 U.S. 189, 92 S.Ct. 410 (1971); *Reed v. Reed*, 404 U.S. 71, 92 S.Ct. 251 (1971). No offsetting state interest appears in the record or order. Under the test of strict scrutiny, deposition fee regulation should, of course, be held unconstitutional (see discussions in *Dorrough v. Estelle*, 5 Cir. 1974, 497 F.2d 1007 and many cases cited; *Salyer Land Co. v. Tulare Lake Basin*, 410 U.S. 719; 93 S.Ct. 1224 (1973)). The deprivation of equal protection here resulted in the deprivation of due process of law because of the arbitrary discrimination. The classification is "suspect". Close scrutiny is required. Application of *Griffiths*, 413 U.S. 718, 83 S.Ct. 2851 (1973). Most assuredly the 14th Amendment was violated by the order, even under the national correction test.

G.

CONCLUSION

The Petition for a Writ of Certiorari should be granted, and the decisions and judgments of the Florida Supreme Court (and the Third District Court of Appeal) should be quashed and reversed with directions to set aside those portions of General Order No. 5 which purport to regulate court reporters fees for depositions and for attendance thereat. This *certainly is so at least* insofar as the decisions and order below approve regulation of fees for depositions not to be filed in court, and for deposition copies prepared by the court reporters on private agreements between court reporters and their customers.

Respectfully submitted,

PODHURST, ORSECK &
PARKS, P.A.

By _____
ROBERT ORSECK

H.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that three true copies of the foregoing Petition for a Writ of Certiorari and Appendix has been mailed to the Dade County Attorney, Stuart Simon, 1626 Dade County Courthouse, Miami, Florida 33130, and three copies to Alan T. Dimond, Esquire, Greenberg, Traurig, Hoffman, Lipoff & Quentel, 1401 Brickell Avenue, Miami, Florida, this ____ day of October, 1975, in accordance with Rule 33 of this Court.

ROBERT ORSECK and
PODHURST, ORSECK &
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By _____
ROBERT ORSECK